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THE PROCTER & GAMBLE COMPANY
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EXAMINER

MISIASZEK, AMBER ALTSCHUL

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER WILLIAM WASCO

Appeal 2016-007902
Application 12/502,800
Technology Center 3600

Before JOHN A. EVANS, JOYCE CRAIG, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellant, the real party in interest is The Procter & Gamble Company. Br. 1.

INVENTION

Appellant's claimed invention relates to displaying data for a physical retail environment on a virtual illustration of the physical retail environment.

Abstract. Claim 1 is illustrative and reads as follows:

1. A method of displaying sales related data for a physical retail environment that sells physical goods on an electronic illustration of the physical retail environment as a virtual retail environment comprising:

displaying the electronic illustration of the virtual retail environment of the physical retail environment on an electronic display in human scale that partially surrounds a user wherein the electronic illustration comprises a store layout of at least one from a group comprising:

virtual store shelves, virtual aisles, virtual departments, a virtual exit, a virtual entrance, and a virtual checkout location;

identifying products for sale in the physical retail environment corresponding to the virtual retail environment;

assigning a unique location within the store layout to each of the products;

identifying sales related data for the products for sale;

selecting a display item wherein the display item is at least one from a group comprising:

the product; a product category; the virtual store shelf; the virtual aisles and the virtual departments; customer traffic data

displaying the sales related data for the display item on the electronic illustration of the virtual retail environment wherein the sales related data for the display item is displayed in proximity to the unique location of a corresponding product of the display item within the store layout.

REJECTIONS

Claims 19 and 20 stand rejected under 35 U.S.C. § 101 because the claims recite a computer storage medium that could reasonably comprise a transitory propagating signal per se.

Claims 1–20 stand rejected under 35 U.S.C. § 101 because the claimed subject matter is judicially-excepted from patent eligibility.

Claims 1–20² stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 1–5, 7, 15, 16, and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sandus et al. (US 2002/0072993 A1; published June 13, 2002) (“Sandus”).

Claim 6 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Sandus and Sorensen (US 2006/0010030 A1; published Jan. 12, 2006).

Claims 8–14, 17, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Sandus, Sorensen, and Klaubauf et al. (US 2003/0200129 A1; published Oct. 23, 2003) (“Klaubauf”).

ANALYSIS

We have reviewed the rejections of claims 1–20 in light of Appellant’s arguments that the Examiner erred. We have considered in this decision only those arguments Appellant actually raised in the Briefs. Any other arguments Appellant could have made but chose not to make in the Briefs are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection of Claims 19 and 20 under 35 U.S.C. § 101

The Examiner rejected claims 19 and 20 as directed to non-statutory subject matter because the claims recite a “computer storage medium” that

² The Examiner did not provide a heading for this rejection. Final Act. 7. The Examiner indicated in the body of the rejection that independent claims 1, 15, and 19 recite an indefinite term. *Id.* We understand the Examiner to have rejected the three independent claims and all claims depending from those claims, i.e., claims 1–20.

could reasonably comprise a transitory propagating signal per se. Final Act. 3–4 (citing *In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007)).

Appellant contends the Examiner erred because “[t]he Examiner has not provided an indication of how anything related to a method may be stored in what has been characterized as a transient medium.” Br. 4. Appellant further argues “[t]he Examiner offers no basis for reading computer storage medium as computer readable medium.” *Id.*

Appellant’s arguments are not persuasive. During examination, claims are given their broadest reasonable interpretation consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The broadest reasonable interpretation of claims drawn to a “computer storage medium” usually encompasses transitory signals, unless the specification explicitly discloses otherwise. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1859–64 (PTAB 2013) (precedential). When the broadest reasonable interpretation of a claim includes transitory signals, the claim covers non-statutory subject matter and should be rejected under 35 U.S.C. § 101. *See Nuijten*, 500 F.3d at 1356–57; *Mewherter*, 107 USPQ2d at 1862. Here, Appellant has not identified a definition of “computer storage medium” in the Specification that precludes the recited term from encompassing transitory signals, and we find none.

For these reasons, we are not persuaded the Examiner erred in finding claims 19 and 20 are directed to non-statutory subject matter. Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 19 and 20.

Rejection of Claims 1–20 under 35 U.S.C. § 101

Appellant contends the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101 because the Examiner mischaracterized the claims as

directed to the abstract idea of receiving a prescription claim request. Br. 5.

Appellant argues the claims are directed to

machines, storage media, and processes associated with providing a virtual, interactive, representation of a physical retail environment including the presentation of products offered for sale in the physical environment together with sales related data about the products, not the broad abstraction of presenting sales data and not the receipt of a prescription claim request.

Id.

We agree the Examiner erred in the Final Action by characterizing the claims as directed to receiving a prescription claim request. *See* Final Act.

5. The Examiner, however, did not err in determining the claims are directed to an abstract idea. In the Answer, the Examiner explained the claims are directed to presenting product data and actions that facilitate transmitting product data and, thus, relate to comparing new and stored information and using rules to identify options, using categories to organize, store and transmit information, and data recognition and storage. Ans. 5–6. The Examiner further found the recited technical environment is a generic display environment, and “the computer functions performed of one or more of displaying the electronic illustration of the virtual retail environment are merely generic computer functions that are well-understood, routine and conventional in the industry.” *Id.* at 7.

We have considered Appellants’ arguments, but do not find them persuasive of error. Applying the first step of the *Alice* analysis, we are not persuaded by Appellant’s arguments that claims 1–20 are not directed to abstract ideas and agree, instead, with the Examiner’s conclusions. *See Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014). We agree

with the Examiner that the claims are directed to presenting product data and actions that facilitate transmitting product data. *See* Ans. 4–6. As in *Electric Power Group*, the purported advance of claim 1 resides in uses for existing computer capabilities, not in new or improved computer capabilities, per se. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also id.* at 1353–54 (explaining that an invention directed to the collection, manipulation, and display of data is an abstract process). Accordingly, we find that the claims are directed to a patent-ineligible concept.

Step two of the analysis considers whether the claims contain an inventive concept such as additional limitations that narrow, confine, or otherwise tie down the claims so they do not fully cover the abstract idea itself. *See Alice*, 134 S. Ct. at 2357. Here, we agree with the Examiner that no inventive concept is present. In particular, the hardware features are the type of generic element that has been determined to be insufficient by the Supreme Court to transform a patent-ineligible claim into one that is patent-eligible. *See id.* Appellant did not file a Reply Brief, and has not persuasively rebutted the Examiner’s findings set forth in the Answer. We agree with and adopt as our own the Examiner’s findings of facts and conclusions as set forth in the Answer (Ans. 4–7).

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 1–20.

Rejection of Claims 1–20 under 35 U.S.C. § 112, Second Paragraph

The Examiner considered the term “human scale” in claims 1, 15, and 19 indefinite. Final Act. 7. The Examiner interpreted “human scale” to mean “making a life size representation to enhance viewing.” Ans. 8. The

Examiner explained that, in a virtual reality environment, making an object “human scale” would be interpreted as making the object life size or life like for the avatar or character interacting in the virtual reality environment. *Id.* The Examiner found no way to ascertain from the definition given in the specification whether “human scale” is compared to the avatar or the human viewer. *Id.*

We agree with Appellant that the Examiner erred in concluding the disputed term is indefinite. The rejected claims do not recite an avatar and, in light of paragraph 24 of the Specification, one with ordinary skill in the art would have been apprised of the scope of the claimed “human scale.” Thus, for essentially the reasons argued by Appellant (Br. 8), we reverse the Examiner’s indefiniteness rejection of independent claims 1, 15, and 19, and claims depending therefrom.

Rejection of Claims 1–20 under 35 U.S.C. § 103(a)

In rejecting the claims for obviousness, the Examiner relied on Sandus as teaching the final “displaying” step of claim 1. Appellant contends the Examiner erred because the cited portions of Sandus (paragraphs 101 and 140) teach listing various sets of information from a menu-based system that does not include any display of a retail environment at any scale, and is not for the concurrent display of a virtual retail environment overlaid with sales information displayed in proximity to the location of the associated products within the virtual retail environment, as claim 1 requires. Br. 9.

Appellant has not persuaded us that the Examiner erred. In the Answer, the Examiner found paragraphs 7 and 85 of Sandus teach allowing item information to be viewed as popup text using rollover techniques known in the art. Ans. 9. The Examiner explained that paragraphs 101 and

140 of Sandus, read in conjunction with paragraphs 7 and 85, teach or suggest the disputed limitation. *Id.* Appellant has not persuasively rebutted the Examiner's findings. Appellant did not file a Reply Brief, and did not address paragraphs 7 and 85 of Sandus in the Appeal Brief. *See* Br. 9.

For these reasons, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of representative, independent claim 1, as well as the Examiner's 35 U.S.C. § 103(a) rejection of grouped claims 2–5, 7, 15, 16, and 19. *See* App Br. 8–9. We also sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 6 and of claims 8–14, 17, 18 and 20, for which Appellant's arguments are similar to those set forth for claim 1, discussed above. *See id.* at 9–12.

DECISION

We affirm the Examiner's decision to reject claims 1–20 under 35 U.S.C. § 101.

We reverse the Examiner's decision to reject claims 1–20 under 35 U.S.C. § 112, second paragraph.

We affirm the Examiner's decision to reject claims 1–20 under 35 U.S.C. § 103(a).

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 1–20 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED